

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
AMENDMENTS TO THE RESOURCE PROTECTION ORDINANCE (SAN DIEGO
MUNICIPAL CODE SECTION 101.0462)

On December 12, 1990, the City Council directed the City Attorney to prepare an ordinance for introduction before the Council to amend the Resource Protection Ordinance (RPO), San Diego Municipal Code section 101.0462. The ordinance was to be based upon the draft language submitted by the Planning Director in Planning Department Report No. 90-378 dated November 23, 1990, together with certain amendments thereto proposed by Councilmember Wolfsheimer and conceptually approved by the Council for incorporation into that draft. We have prepared such a draft.

We did not, however, add language to subsections J.6 and J.7 to exclude from those exemptions any properties within the adopted La Jolla community plan boundaries, as was noted in the Council action of December 12, in order to allow our approval, both as to form and legality.

We reason that RPO is based upon citywide topographical and resource classification and justification and not upon geographic location as to its applicability. To do otherwise would create a legal anomaly. To require permits to be obtained for the construction or reconstruction of single-family residences only in the La Jolla community planning area, but not elsewhere, would create both spot zoning and equal protection issues. Notwithstanding, should Council determine and make findings that there is a distinct rational justification based upon either resources or topography peculiar to the La Jolla area that is not already addressed within the scope of RPO, Council may consider adding the following language: "Except in the La Jolla community planning area" to precede the existing language in subsections J.6 and J.7.

A "pipeline" provision has been inserted as subsection R. instead of including this provision in the uncodified section detailing the effective date of the ordinance. Amendments

affecting development permits can be applicable to completed applications coming forth after the date of introduction of such ordinances. Inclusion of pipeline language within the text of RPO makes it clear to the public how it applies.

We have drafted provisions in subsection S. governing the

applicability of RPO to City projects. The proposed criteria is based on fiscal year 1992 considerations and existing project or financing approvals. The actual scope of RPO's applicability to City projects may reflect whatever fiscal and policy considerations the Council believes is appropriate.

It should be kept in mind, however, that while RPO may complement CEQA (California Environmental Quality Act, Public Resources Code section 21000 et seq.), in some cases it may still preclude project development irrespective of overriding considerations under CEQA, unless the Council also makes project by project determinations to modify RPO constraints as they may apply to that project. Therefore, you may wish to consider including a provision to allow the Council, by resolution, to exempt a particular public project from RPO. This will allow some flexibility in the administration of RPO without adversely and unalterably impacting City projects except through an ordinance amendment process. Should you concur, the phrase "Except as otherwise provided by Council resolution" may be added to precede the proposed language of subsection S. Additionally, should you determine that RPO should apply in any particular fiscal year, then you should indicate which year.

Finally, we note that should you elect to apply RPO to City projects, some refinement to the encroachment tables or alternative compliance provisions may be necessary to address inherent differences between public and private projects.

Respectfully submitted,

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City Attorney

RH:ps:600(043.1)

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